

Defendants.

[illegible]

OPINION & ORDER
[Resolving Doc. No. 5]

-1-

Case No. 1:11-CV-02492
Gwin, J.

evidence to arrive at the factual predicate that subject matter jurisdiction exists or does not exist.” [*Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 325 \(6th Cir. 1990\)](#). Moreover, this Court “has wide discretion to allow affidavits, documents and even a limited evidentiary hearing to resolve disputed jurisdictional facts.” *Id.* To survive a motion to dismiss under [Rule 12\(b\)\(6\) of the Federal Rules of Civil Procedure](#), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” [*Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 \(2009\)](#) (citing [*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 \(2007\)](#)).

As part of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), [12 U.S.C. § 1821\(d\)](#) establishes the “[p]owers and duties of [FDIC] as conservator or receiver,” for a depository institution, including the power to manage the depository institution’s assets. Once FDIC is appointed receiver, [12 U.S.C. § 1821\(d\)](#) mandates an administrative-claims process for claims against the depository institution (and the FDIC as receiver). Moreover, [12 U.S.C. § 1821\(d\)\(13\)\(d\)](#) provides that “no court shall have jurisdiction over . . . any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the [FDIC] has been appointed receiver”

That section is not an “absolute bar to jurisdiction.” [*Village of Oakwood v. State Bank and Trust Co.*, 539 F.3d 373, 385 \(6th Cir. 2008\)](#) (citing [*Home Capital Collateral, Inc. v. F.D.I.C.*, 96 F.3d 760, 763 \(5th Cir.1996\)](#)). But the *Village of Oakwood* court further explained that 12 U.S.C. § 1821(d)(13)(d) is a statutory exhaustion requirement and that the “failure to file an administrative claim within the period provided by § 1821(d)(6) results in [the claimant] having no further rights or remedies with respect to such claims” *Id.* at 385-86.

That statutory exhaustion requirement applies to Bradley’s claims. On December 4, 2009,

Case No. 1:11-CV-02492
Gwin, J.

the Office of Thrift Supervision closed AmTrust Bank and appointed FDIC as its receiver. [Doc. [5-2](#); Doc. [5-3](#).] Nearly two years later, on November 16, 2011, Bradley filed her complaint.^{1/} [Doc [1-2](#).] Bradley's claim for a declaration that a mortgage held by AmTrust is void is an "action seeking a determination of rights with respect to the assets" of AmTrust Bank. [12 U.S.C. § 1821\(d\)\(13\)\(d\)](#). Accordingly, Bradley's claims against AmTrust, with FDIC as receiver, fall within the class of claims governed by § 1821(d).

Bradley has not fulfilled that section's exhaustion requirements. According to FDIC, Bradley never filed an administrative claim with the FDIC. [Doc [5-1](#).] Bradley provides no proof (or argument) to the contrary. Because Bradley has not exhausted her administrative remedies as required by § 1821(d), the Court lacks jurisdiction over Bradley's claim.

Furthermore, Bradley's claims for declaratory and injunctive relief are barred by [12 U.S.C § 1821\(j\)](#) which provides that "[e]xcept as provided in this section, no court may take any action . . . to restrain or affect the exercise of powers or functions of the [FDIC] as a conservator or a receiver." Citing a D.C. Circuit decision, the Sixth Circuit noted that "§ 1821(j) barred the court from restraining the foreclosure . . . because that would restrain or affect the FDIC's exercise of its powers or functions as . . . receiver." [Superior Bank, FSB v. Boyd \(In re Lewis\), 398 F.3d 735, 740 \(6th Cir. 2005\)](#) (internal quotation marks omitted) (citing [Freeman v. F.D.I.C., 56 F.3d 1394, 1398 \(D.C.Cir.1995\)](#)).

Similarly, Bradley's complaint, seeking to quiet title and injunctive relief preventing eviction, would "restrain or affect the FDIC's exercise of its powers" as receiver. [Id.](#) Accordingly, Bradley's

^{1/}Bradley, apparently aware that FDIC was appointed receiver, states that "the U.S. Office of Thrift Supervision closed down the bank after its' [sic] parent company, AmTrust Financial Corp. filed for Chapter 11 bankruptcy." [Doc. [1-2](#).]

Case No. 1:11-CV-02492
Gwin, J.

claims for injunctive and declaratory relief are barred by [12 U.S.C § 1821\(j\)](#) and, under [Federal Rule of Civil Procedure 12\(b\)\(6\)](#), must be dismissed.

For the reasons stated above, the Court GRANTS FDIC's motion to dismiss.

IT IS SO ORDERED.

Dated: February 10, 2012

s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE